ABDUL RAHIM MOHAMAD *a*

v.

KEJURUTERAAN BESI DAN PEMBINAAN ZAMAN KINI

HIGH COURT MALAYA, KOTA BAHRU *b*
ARIFIN ZAKARIA J
[CIVIL SUIT NO: 23-13-1994]
4 JUNE 1998

DAMAGES: *Action for - Plaintiff injured in the course of employment - Whether plaintiff an insured person within s. 2(11) of Employees' Social Security Act 1969 - Whether precluded from recovering damages* *c*

WORDS & PHRASES: *"insured person" - Definition - Employees' Social Security Act 1969, s. 2(11)*

The plaintiff claimed for damages arising out of an accident which occurred while the plaintiff was carrying out repair work to the ceiling of a school hall. The plaintiff was employed by the defendant as a general labourer and the accident occurred in the course of his employment. *d*

The court had to decide on a preliminary issue as to whether the plaintiff was an "insured person" as defined in the Employees' Social Security Act 1969 and therefore precluded from recovering damages from the defendant in respect of an employment injury under the common law or other law for the time being in force. *e*

The plaintiff alleged that he was not an insured person because both the plaintiff and the defendant had not until the date of the trial paid any contribution to SOSCO. Further, neither of them had ever been registered with SOSCO. The plaintiff relied on the case of *Lian Ann Lorry Transport & Forwarding Sdn Bhd v. Govindasamy* for support. The defendant, however, contended that based on the present definition of "insured person", the decision in that case was no longer good law. *f* *g*

Held:

[1] The decision in *Lian Ann Lorry Transport & Forwarding Sdn Bhd v. Govindasamy* turned on the fact that the respondent was not registered with the SOSCO at the time of the accident. The present definition of "insured person" expressly states that it no longer matters whether the industry or employee is registered or not, as long as the industry is one to which the Act applies. *h*

i

[1a] In view of the above, the plaintiff was an "insured person" under the Act and therefore, by virtue of ss. 31 and 42 of the Act the plaintiff was precluded from recovering damages from the defendant in respect of his injury, which was employment injury under the common law or other law for the time being in force. The plaintiff's claim was therefore dismissed with costs.

Per curiam

[1] At common law, a master is under a duty arising out of the relationship of master and servant, to take reasonable care for the safety of his workplace in all the circumstances of the case so as not to expose them to unnecessary risk. Among these duties are: (i) the provision of proper and suitable plant and appliances; and (ii) the provision and maintenance of a reasonable safe system of working.

[2] Had the Act not precluded the plaintiff from claiming against the defendant, this court found that: (i) the defendant had failed to comply with both his common law and statutory obligations to ensure the safety and welfare of his employees while carrying out the work on that fateful day. The defendant had breached regs. 74(1), 77(3)(c), 85(1) and 88(1) of the Factories and Machinery Building Operations and Works of Engineering Construction (Safety) Regulations 1986. Therefore, the accident which resulted in the injury to the plaintiff would not have occurred without the negligence of the defendant and/or his servant; and (ii) the plaintiff ought to have known that by remaining on the scaffolding while the same was being pushed, he was exposing himself to the unnecessary risk of injury to himself should the scaffolding collapse or fall for some reason or other. This constituted a breach of s. 24(1)(a) and (d) of the Occupational Safety and Health Act 1994. Thus, there was contributory negligence on the part of the plaintiff.

[Claim dismissed with costs.]

Cases referred to:

Boyle v. Kodak Ltd [1969] 2 All ER 439 ***(refd)***

Ho Teck Fah v. Looi Wah [1981] 1 MLJ 162 ***(refd)***

Lai Yew Seong v. Chan Kim Sang [1987] 1 CLJ 351 ***(refd)***

Lian Ann Lorry Transport & Forwarding Sdn Bhd v. Govindasamy [1982] 1 CLJ 538 ***(refd)***

Mohamed Fauzi Hassan v. Swissco Pte Ltd & Government of the Republic of Iraqi (Iraqi State Enterprise For Maritime Transport – Third Party) [1986] 1 MLJ 461 ***(refd)***

Tan Ah Kau v. The Government of Malaysia [1997] 2 CLJ Supp 168 ***(foll)***

Tan Peng Loh v. Lee Aik Fong & Anor [1981] 1 CLJ 167 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 28A(2)(i)
Employees' Social Security Act 1969, ss. 2(11), 3, 31, 42
Factories and Machinery (Safety, Health and Welfare) Regulations 1970, reg. 12
Factories and Machinery Building Operations and Works of Engineering Construction (Safety) Regulations 1986, regs. 74(1), (2), 77(3)(c), 85(1)(a), 88(1)
Occupational Safety and Health Act 1994, ss. 24(1), (a), (d)

Other source referred to:
Halbury's Laws of England, 4th edn, para 978

For the plaintiff - Wan Farlene Wan Adib; M/s Wan Adib & Co
For the defendant - Aaron Abraham; M/s Lachaman Lalchand & Assoc

Reported by Usha Thiagarajah

JUDGMENT

Arifin Zakaria J:

This is a claim for damages arising out of an accident which occurred while the plaintiff was carrying out repair work to the ceiling of the school hall of Sekolah Menengah Sains, Cheras, Kuala Lumpur. The facts may be briefly stated as follows.

According to the plaintiff, in the morning of 21 April 1992, he was asked by the defendant to go to the Sekolah Menengah Sains, Cheras to do some repair work to the ceiling of the school hall. He went there with two co-workers namely, Fauzi bin Ariffin (SP3) and Abdullah bin Hassan (SB2).

On arrival the three of them put up the necessary scaffolding to carry out the work. Soon after that SP3 left the place leaving the plaintiff and SB2 to do the work. On the day in question five pieces of the scaffolds were used, each one with a height of 4 feet, so the total height of the scaffolding was around 20 feet. At the top of the scaffolding there was a metal platform for the worker to sit on while attending to the work. There was no railing around the platform. There was a gap of about 1 foot between the ceiling and the head of the workman seated on the platform.

At about 4 pm, SP3 came back to the school to pick up the plaintiff and SB2. When SP3 arrived he invited both of them for a drink at the school canteen. After that the plaintiff went back to work on the scaffolding. While the plaintiff was on top of the scaffolding he requested SP3 to push the scaffolding to another part of the hall. As SP3 was pushing the scaffolding, the plaintiff

said, it started to shake so he held on to the platform. He then told SP3 to slow down and SP2 replied by telling him to be careful. When he thought that the scaffolding was about to tumble he jumped towards the wall where there was a wooden box and tried to hold on to the box, but the box gave way and he fell to the floor. At about the same time the scaffolding tumbled to the floor.

The plaintiff was then taken to the Kuala Lumpur Hospital where he was hospitalised for 50 days. He received follow-up treatment at the Kota Bharu Hospital.

Going back to the scene of the accident, SP3 told the court that when he was about to push the scaffolding he asked the plaintiff to come down but the plaintiff refused to do so. He saw the plaintiff sitting at the edge of the platform on the side close to the wall of the school hall. SP3 further told the court that when he pushed the scaffolding it started turning and after that it fell to the floor. At about the same time he also saw the plaintiff fall to the floor close to the wall.

The other eyewitness, SB2, gave a slightly different version of the accident. He told the court that after the plaintiff had finished working in one part of the ceiling the plaintiff asked SP3 to push the scaffolding to another area. He and SP3 then told the plaintiff to come down first before SP3 push the scaffolding but the plaintiff told SP3 that he would hang on to the wooden box on the wall while SP3 push the scaffolding. When the plaintiff attempted to do so, he said, the wooden box gave way and that had prompted the plaintiff to jump back onto the platform and as a result the scaffolding tumbled. He said the plaintiff only manage to hang on to the box for less than two minutes when the box gave way.

From the pictures tendered in court IDD(T) it is confirmed that there is a wooden box on the wall of the hall which is about the same height as the scaffolding. Having heard the testimonies of the plaintiff, SP3 and SB2 I find it difficult for me to accept the version given by SB2 for two reasons. Firstly, SB2 at the material time was some distance away from the scaffolding compared to SP3 who was directly involved in pushing the scaffolding. Secondly I think it is highly unlikely for any reasonable person to do what SB2 said the plaintiff had attempted to do. On the whole I find the evidence of SP3, which to a large extent is consistent with the version given by the plaintiff, is to be preferred to that of SB2.

Based on the evidence before me it is also my finding that –

1) the plaintiff was in the employment of the defendant as general labourer from December, 1990 to the date of the accident;

2) the accident arose out of or in the course of his employment;

3) the plaintiff's salary at the date of the accident was RM26 per day;

4) at the time of the accident no contribution to the Social Security Organisation (SOCSO) was made by both the plaintiff and the defendant; and

5) no payment had been received by the plaintiff from SOCSO arising from this accident.

It is submitted for the defendant that the court should firstly deal with the preliminary issue whether the plaintiff is precluded from making this claim by virtue of the Employees' Social Security Act 1969 (the Act). This issue turns on the question whether the plaintiff is an "insured person" as defined in the Act. The Federal Court in *Tan Peng Loh v. Lee Aik Fong & Anor* [1981] 1 CLJ 167; [1982] 1 MLJ 74 held, *inter alia*, that by virtue of ss. 31 and 42 of the Act an "insured person" is precluded from recovering damages from his employer in respect of an employment injury sustained by him as an employee under the common law or other law for the time being in force.

Section 2(11) of the Act defines the words "insured person" as follows –

> "insured person" means a person who is or was an employee in respect of whom contributions are, were or could be payable under the Act, notwithstanding that such industry or employee was not so registered, so long as the industry was one to which this Act applies.

It is submitted for the plaintiff that the plaintiff is not an insured person because both the plaintiff and the defendant had not, until the date of this trial, paid any contribution to SOCSO, and neither of them had ever been registered with SOCSO. The learned counsel for the plaintiff relied on the case of *Lian Ann Lorry Transport & Forwarding Sdn. Bhd. v. Govindasamy* [1982] 1 CLJ 538; [1982] 2 MLJ 232 in support of his contention. The counsel for the defendant, however, contended that based on the present definition of "insured person" the decision of the Federal Court in *Lian Ann Lorry Transport* is no longer good law. He said, that case was decided before the present definition of "insured person" was introduced into the Act. The words "insured person" was then defined as follows –

a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any benefits provided by this Act.

The reasons given by the Federal Court in holding that the respondent in that case was not an "insured person" appears at p. 236 of the judgement where it says –

Only when an employee is an insured person would he be prohibited from claiming benefits under other law. The respondent might well be insurable person under the Act at the time of the accident but he was certainly not an insured person. Unless and until he was registered with the Organisation by the submission of Form 3, no contributions in respect of him were payable to the Organisation and that being the case, he was not an insured person. The evidence clearly shows that he was not insured then, and that when he was insured some 2½ years later he was no longer an employee of the appellants. That being the case section 31 of the Act has no application to his case.

The decision in that case, as it appears to me, turns on the fact that the respondent was not registered with the SOCSO at the time of the accident. The present definition of "insured person" expressly states that it no longer matters whether the industry or employee was registered or not for as long as the industry is one to which the Act applies. This is expressly stated in the concluding part of the definition which reads "..., notwithstanding that such industry or employee was not so registered, so long as the industry was one to which this Act applies." The new provisions were introduced into the Act by Act A 675/1987 which was enforced retrospectively from 1 October 1971. By s. 3 of the Act, as amended by Act A 814/1992, the Act now applies to all industries having one or more employee.

On the above premises I hold that the plaintiff is an "insured person" under the Act and therefore, by virtue of ss. 31 and 42 of the Act the plaintiff is precluded from recovering damages from the defendant in respect of his injury, which is an employment injury, under the common law or other law for the time being force. The plaintiff's claim is therefore dismissed with costs.

However, had the Act not precluded the plaintiff from claiming against the defendant, my findings on liability and quantum are as follows.

Liability

In para. 7 of the statement of claim the plaintiff claims that the personal injury suffered by him arose out of the negligence of the defendant. The particulars of the defendant's negligence were stated as follows –

(a) Gagal untuk menyediakan tempat kerja yang selamat kepada Plaintif;

(b) Mendedahkan Plaintif kepada risiko kecederaan yang mana Defendan telah tahu atau sepatutnya tahu;

(c) Menyediakan scaffolding yang tidak selamat untuk kegunaan Plaintif walaupun Defendan telah tahu bahawa alat tersebut tidak selamat untuk digunakan dan tidak berfungsi dengan sempurna;

(d) Defendan gagal untuk menyediakan alat-alatan kerja yang sempurna dan sesuai kepada Plaintif untuk menjalankan kerja-kerja yang diarahkan oleh Defendan.

It is submitted for the plaintiff that by reasons of the above the defendant had committed breaches of both his common law and statutory duties, which the defendant as an employer owed to the plaintiff.

At common law a master is under a duty, arising out of the relationship of master and servant, to take reasonable care for the safety of his workpeople in all the circumstances of the case so as not to expose them to unnecessary risk. (See *Halbury's Laws of England* 4th edn, para 978). Among these duties are – (a) the provision of proper and suitable plant and appliances; and (b) the provision and maintenance of a reasonable safe system of working. Further it is submitted that the defendant had breached regs. 74(1) & (2), 77(3)(c), 85(1)(a), and 88(1) of the Factories and Machinery Building Operations and Works of Engineering Construction (Safety) Regulations, 1986 ("the Regulations"). The above mentioned regulations provide as follows:

1) Regulation 74(1):

> No scaffold shall be erected or be substantially altered or be dismantled except under the direct supervision of a designated person.

Regulation 74(2):

> All materials to be used for the construction of scaffolds shall be inspected by a designated person on each occasion before being used.

2) Regulation 77(3):

> Any mobile scaffold or scaffold which can be moved on wheels or skids shall unless it is a suspended or slung scaffold, be –
>
> (a) ...
>
> (b) ...
>
> (c) adequately secured to prevent movement when any person is working upon it; and
>
> (d) ...

3) Regulation 85(1):

> Subject to the provision of these Regulations, no scaffold shall be used unless –
>
> (a) it has been inspected by a designated person within the preceding seven days; and
>
> (b) ...
>
> (c) ...

4) Regulation 88(1)

> Subject to sub-regulations (3), (4) and (5) every side of a working platform or working place, being a side thereof from which a person is liable to fall a distance of more than 3 metres, shall be provided with a suitable guardrail or guard-rails of adequate strength to a height of at least one metre above the platform or place and above any raised standing place on the platform, and with toe-boards up a sufficient height being in no case less than 200 milimetres and so placed as to prevent so far as possible the fall of persons materials and tools from such platform or place.

The plaintiff also seeks to rely on reg. 12 of the Factories and Machinery (Safety, Health and Welfare) Regulations 1970 which provides that –

> 12. Where any person is required to work at a place from which he will be liable to fall a distance or more than ten feet, means shall be provided to ensure his safety and such means shall where preticable include the use of safety belts or ropes.

Having perused the evidence I agree with the submission of learned counsel for the plaintiff that the defendant failed to comply with both his common law and statutory obligations to ensure the safety and welfare of his employees while carrying out the work on the fateful day.

Firstly I find that there was a breach of reg. 74(1), since no designated person was appointed to supervise the erection of the scaffolding. The scaffolding was also not adequately secured to prevent movement as required by reg. 77(3)(c). There is also no evidence to show that the scaffolding had been inspected by a designated person within the preceding seven days as required by reg. 85(1). The scaffolding was also not provided with guard rail and toe-board as required by reg. 88(1). Further I find there is no proper supervision by a competent person of the work to ensure that all the safety measures were being complied with by the employees. Had there been proper supervision I am sure the plaintiff would not be allowed to remain on top of the platform while his co-

worker was pushing the scaffolding. However, in my opinion reg. 12 of the Factories and Machinery (Safety, Health and Welfare) Regulations 1970, is not applicable to this case.

Therefore, it is my finding that in the present case the accident which resulted in the injury to the plaintiff would not have occurred without the negligence of the defendant and/or his servant. The next question is, is there any contributory negligence on the part of the plaintiff? The concept of contributory negligence was explained by the Supreme Court in *Lai Yew Seong v. Chan Kim Sang* [1987] 1 MLJ 403. At p. 404 Seah SCJ said,

> In addition, the word "negligence" is not used in its usual meaning. Negligence ordinarily means breach of a legal duty to take care, but as used in the expression "contributory negligence" it does not mean breach of duty. It means the failure by a person to use reasonable care for the safety of himself or his property, so that he becomes "the author of his own wrong" [see Parke B. in *Bridge v. Grand Junction Ry (2)* and the judgment of Lord Maugham in *R. v. Southern Canada Power Co.* (3)]. More recently in *Nance v. British Columbia Electric Ry.* (4) Lord Simon said:
>
> > When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove ... that the injured party did not in his own interest take reasonable care of himself and contributed by his want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full.

Earlier in the same page he said,

> The amount of care which the plaintiff may reasonably be expected to take necessarily varies with the circumstances and with the conditions actually prevailing at the material time.

It is submitted on behalf of the defendant that according to the testimonies of SP3 and SB2 the normal procedure is for the worker to come down from the scaffolding before it is pushed to another part of the hall. What had happened here was that the plaintiff after finishing work in one part of the ceiling refused to come down from the scaffolding despite being asked to do so by SP3. While the plaintiff was on the scaffolding SP3 pushed the scaffolding to another part of the hall and in so doing the scaffolding fell to the ground thereby injuring the plaintiff. It is contended that the the plaintiff's refusal to come down from the scaffolding while the same was being pushed by SP3 constitutes a negligent conduct on his part. The defendant also draws

my attention to s. 24(1) of the Occupational Safety and Health Act 1994 which provides –

> 24(1) It shall be the duty of every employee while at work:
>
> (a) to take reasonable care for the safety and health of himself and of other persons who may be affected by this acts or omissions at work;
>
> (b) ...
>
> (c) ...
>
> (d) to comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or this Act or any regulation made thereunder.

It is alleged that the conduct of the plaintiff here was also in breach of s. 24(1)(a) and (d) of the Occupational Safety and Health Act 1994 and such breach of statutory duty by the plaintiff as much as any carelessness, amounts to contributory negligence on his part. (See *Boyle v. Kodak Ltd.* [1969] 2 All ER 439.

Having regard to the conduct of the plaintiff in this case I am inclined to agree with the defendant that the plaintiff is partly to blame for the accident. The plaintiff ought to have known that by remaining on the scaffolding while the same was being pushed he was exposing himself to the unnecessary risk of injury to himself should the scaffolding were to collapse or fall for some reasons or other. The conduct of the plaintiff also, as submitted by the defendant, constitutes a breach of s. 24(1)(a) and (d) of the Occupational Safety and Health Act 1994. For above reasons I am driven to the conclusion that there was contributory negligence on the part of the plaintiff.

The next question is, what is the degree of blame to be placed on the plaintiff. This I must admit is not an easy question to answer. Having regard to all the circumstances of this case I come to the conclusion that both the plaintiff and the defendant are equally to blame for the accident. I say so for the simple reason that the accident would not have occurred had the defendant exercised proper supervision of the work. With proper supervision it is reasonable to expect that the plaintiff would not be allowed to remain on the scaffolding when the same was being pushed. The plaintiff on the other hand, in the interest of his own safety, should not have remained on the scaffolding. He should have come down while the scaffolding was being pushed and only after it has been securely set up should he go up the scaffolding again.

Quantum

The plaintiff was admitted to Hospital Kuala Lumpur on 21 April 1992 and was discharged on 9 June 1992. According to the medical report (P7) the plaintiff suffered the following injuries –

1) unstable fracture of 1st lumber vertebra with paraplegia; and

2) closed fracture right olecranon.

According to the same report general resuscitatory measures were instituted. Physiotherapy was started from the second day of admission. The fractured olecranon was internally fixed with screws and wires. The urology department managed the plaintiff's urinary problems. The plaintiff was referred to Kota Bharu General Hospital for further physiotherapy. The latest medical report dated 14 February 1995 by Dr Ruslan (SP1) gave the following prognosis –

Conclusion

1. This 25 years old young man sustained a compression fracture of the L1 (lumber one) vertebra with associated neurology.

2. He was initially paralysed but regained incomplete recovery of his neurology with residual dysfunction of his bladder and bowel and both ankles. All these abnormalities are due to the fractured lumbar vertebra and affecting the spinal nerve roots.

3. The impaired sensation in both lower limbs, inability to move both feet and difficulties in both micturition and bowel opening will be permanent.

4. The pain and discomfort he experienced over the back is secondary to the injury he sustained over the lumbar vertebra. These experiences can be lessen with physiotherapy and medication.

5. He will have to use permanent foot drop checks in his shoes to help him in his walking. Use of walking aid will be of great help to him. He will not be able to use other kind of footwears like slippers.

6. He will not be able to be involved in activities requiring free use of his lower limbs.

7. He can be gainfully employed in sedentary jobs requiring free use of his upper limbs but not his lower limbs.

8. He has to take extra care of both his anaesthetic foot and outer aspect of his legs so as to prevent cuts and ulceration developing.

Special Damages

(a) Pre trial loss of earnings.

The plaintiff in his evidence stated that his salary was RM26 per day. He said he was paid on daily basis. I have no doubt that the plaintiff was earning RM26 per day, as claimed by him. After taking into account weekends and public holidays the learned counsel for the plaintiff submitted that the plaintiff's salary per month would be around RM600. I think that is a fair assessment of his average income per month.

The plaintiff was less than 30 years of age at the date of the accident, therefore, the multiplier to be applied should be 16 as provided by s. 28A(2)(i) of the Civil Law Act 1956. From the medical evidence it appears that the plaintiff may still be gainfully employed in sedentary job requiring free use of his upper limbs but not his lower limbs. However, I agree that the plaintiff's income will be considerately reduced due to the injury. In *Ho Teck Fah v. Looi Wah* [1981] 1 MLJ 162 where the plaintiff suffered similar injury as the plaintiff in the present case the court assessed the loss of earning capacity to be 80%. After considering the medical evidence and observing the plaintiff in court, in my assessment the plaintiff here will suffer a similar loss of capacity to earn in the future. Therefore taking his income to be RM600 per month, less 80%, his income in the future will be around RM120 per month.

The pre trial period in this case is 72 months. Until the date of trial the plaintiff was still unemployed.

According to him he did try to sell burger sometime in 1997 but he found it not practicable because he couldn't lift heavy objects such as frying pen and so forth. It is trite law that the plaintiff is under duty to mitigate his loss. In the circumstances obtaining in this case I think it is not unreasonable to expect the plaintiff to find suitable alternative employment within two years from the date of the accident had he put in sufficient effort to find one. On that basis the pre trial loss of earnings will be as follows:

24 x RM600 = RM14,400

48 x RM480 = RM23,040

Total = RM37,440

On 50% liability it comes to RM18,720.

(b) Cost of Medical Reports.

Based on the receipts at pp. 3,4,5 & 6 of IDP the total cost of medical report comes to RM720. On 50% liability it comes to RM360.

General Damages

(a) General damages for pain and suffering.

The counsel for the plaintiff submitted that the court should award the sum of RM500,000 being general damages for pain and suffering and loss of amenities. He cited the case of *Mohamed Fauzi Hassan v. Swissco Pte. Ltd. & Government of the Republic of Iraqi (Iraqi State Enterprise For Maritime Transport – Third Party)* [1986] 1 MLJ 461 in support of his submission. I find that case of little assistance because the nature of the injury differs greatly from the instant case. The defendant's counsel submitted that the general damages is between RM18,000 to RM25,000 based on the authorities submitted by him. I find the authorities submitted by the counsel for the defendant totally irrelevant and is of no assistance to the court. After searching the authorities I find that the award given in *Tan Ah Kau v. The Government of Malaysia* [1997] 2 CLJ Supp 168; [1997] 2 AMR 1382 to be the best guide. There the plaintiff is a paraplegic, as in the present case, and after considering the earlier awards for the same injury, the court awarded the sum of RM150,000. I would adopt the award made by the learned judge in *Tan Ah Kau* and give an award of RM150,000 on full liability basis. Thus on 50% liability the award is reduced to RM75,000.

(b) General damages for loss of future earnings (post trial loss).

Based on his loss of earnings of RM120 per month on the multiplicand of 120, the plaintiff's loss of future earnings will be RM480 x 120 = RM57,600. On 50% liability it comes to RM23,800.

Summary Of Awards

The above awards may be summarised as follows –

(a) General damages for pain and suffering - RM75,000.

(b) Pre trial loss of earnings – RM18,720.

(c) Post trial loss of earnings – RM28,800.

(d) Cost of medical reports – RM360.

There will be interest for item (a) at 8% p.a. from the date of service of the writ of summons to the date of judgment and on special damages in items (b) and (d) at 4% p.a. from date of accident to the date of judgment and thereafter at 8% p.a. on all the sums from date of judgment to the date of payment.